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Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 3/2016**, ***

Communication submitted by:	I.A.M. (represented by counsel, N.E. Hansen)
Alleged victim:	K.Y.M.
State party:	Denmark
Date of communication:	12 February 2016
Date of adoption of Views:	25 January 2018
Subject matter:	Deportation of a girl to Somalia, where she would allegedly risk being forcefully subjected to female genital mutilation
Procedural issue:	Substantiation of claims
Substantive issues:	Prohibition of discrimination; best interests of the child; protection of the child against all forms of violence or ill treatment
Articles of the Convention:	1, 2, 3 and 19
Articles of the Optional Protocol:	7 (f)

1.1 The author of the communication is I.A.M., a Somali national from Puntland born in 1990. She submits the communication on behalf of her daughter, K.Y.M., born in Denmark on 5 January 2016. The author and her daughter are subject to a deportation order to Puntland, Somalia. She claims that her daughter's deportation would violate her rights under articles 1, 2, 3 and 19 of the Convention. She is represented by counsel. The Optional Protocol entered into force for Denmark on 7 January 2016.

1.2 Based on article 6 of the Optional Protocol, on 16 February 2016, the Working Group on Communications, acting on behalf of the Committee, requested that the State party refrain from returning the author and her daughter to their country of origin while their case was under consideration by the Committee. On 18 February 2017, the State party

* Reissued for technical reasons on 14 March 2018.

** Adopted by the Committee at its seventy-seventh session (15 January–2 February 2018).

*** The following members of the Committee participated in the examination of the communication: Suzanne Aho Assouma, Amal Salman Aldoseri, Hynd Ayoubi Idrissi, Jorge Cardona Llorens, Bernard Gastaud, Olga A. Khazova, Hatem Kotrane, Cephas Lumina, Gehad Madi, Benyam Dawit Mezmur, Clarence Nelson, Mikiko Otani, Luis Pedernera Reyna, Jose Angel Rodriguez Reyes, Kirsten Sandberg, Ann Marie Skelton, Velina Todorova and Renate Winter.

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suspended the execution of the deportation order against the author and her daughter. On 16 August 2017, the State party requested that interim measures be lifted (see para. 4.1 below). On 16 January 2017, the Working Group, acting on behalf of the Committee, decided to deny the State party's request to lift the interim measures.

1.3 On 2 March 2017, the State party requested that consideration of the communication be discontinued (see para. 6 below). On 9 June 2017, the Working Group, acting on behalf of the Committee, decided not to discontinue consideration of the communication.

The facts as submitted by the author

2.1 The author entered Denmark on 25 September 2014 without valid travel documents and applied for asylum four days later, together with her husband.[1] On 31 March 2015, the Danish Immigration Service decided that the author's husband should be transferred to Sweden under the Dublin III Regulation.[2] That decision was upheld on 22 April 2015 by the Danish Refugee Appeals Board. On 21 May 2015, the author's husband was transferred to Sweden.

2.2 On 5 October 2015, when the author was six months pregnant, the Immigration Service rejected her asylum application. The author appealed that decision before the Refugee Appeals Board, stating that she was afraid of being killed by her family because of her secret marriage against the family's will in 2007[3] and the risk that her daughter would be subjected to female genital mutilation if deported to Puntland.

2.3 On 2 February 2016, the Refugee Appeals Board rejected the author's appeal and ordered her deportation to Somalia, without indicating a specific region. The Board considered that the author's statements were inconsistent and lacked credibility, in particular with regard to her father's reaction when he learned about her secret marriage in 2007,[4] and the fact that she had stayed in Puntland until 2014 despite her husband's departure in 2007. The Board noted that, between 2007 and 2014, the author lived at home without experiencing any further retaliation. With regard to the risk that the author's daughter would be forcefully subjected to female genital mutilation, the Board relied on the Immigration Service report on female genital mutilation in Somalia,[5] according to which, female genital mutilation was prohibited by law throughout Somalia and it was possible for mothers to avoid having their daughters subjected to female genital mutilation against the mother's will, in particular in Puntland.

2.4 Since the Refugee Appeals Board decision cannot be appealed in the Danish judicial system, the author states that domestic remedies have been exhausted. She adds that, since her daughter had not yet been born when the Immigration Service handed down its decision,

[1] The author does not specify how or when her husband, who had purportedly been residing in Sweden since 2007, joined her and arrived in Denmark.

[2] European Union Regulation No. 604/2013 (Dublin III Regulation) provides a mechanism for determining which country is responsible for examining an application for international protection that has been lodged in a member State by a third country national or a stateless person.

[3] According to the Refugee Appeals Board decision dated 2 February 2016, the author married in 2007, in secret and against her family's will, to a man from a lower clan.

[4] According to the Refugee Appeals Board decision dated 2 February 2016, the author had initially stated before the Immigration Service that, when her father found out about the marriage, he beat her with belts all night long and threatened to kill her husband. However, to the Refugee Appeals Board, she stated that she was held in her room for a month, tied to her bed, and beaten with metal on her feet.

[5] See Denmark, Ministry of Immigration, Integration and Housing, "South central Somalia: female genital mutilation/cutting: thematic paper — country of origin information for use in the asylum determination process" (January 2016). Available at https://www.nyidanmark.dk/NR/rdonlyres/D011EB99-7FB6-4693-921A-8F912F4079CB/0/female_genital_mutilationnotat2016.pdf. In the report, it is stated that "it is possible for women to avoid having their daughters subjected to the practice of FGM/C and some women manage to do so. This, however, would highly depend on the personality of the mother and on whether or not she has the necessary commitment to stand firm against FGM/C and the strong psychological pressure it entails, both from family members and society alike" (p. 8). It is also noted that "a strong personal conviction that her daughter should not undergo the practice is most important for a mother to succeed, with her educational background, social status, cultural or geographical affiliation also being of considerable, yet minor importance".

the issue of her being at risk of female genital mutilation was only assessed by one body, namely the Refugee Appeals Board.

The complaint

3.1 The author claims that her daughter's rights under articles 1, 2, 3 and 19 of the Convention will be violated if she is deported to Somalia, as she may be subjected to female genital mutilation.[6] She claims that the principle of non-refoulement is applicable under the Convention and has extraterritorial effects in certain cases such as female genital mutilation. The author notes that the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have already determined that the respective treaties have extraterritorial effects with regard to deportation cases.[7]

3.2 The author claims that, as a single mother, she will not be able to withstand social pressure and protect her daughter against female genital mutilation in a country where 98 per cent of women are subjected to the practice. She notes that the Refugee Appeals Board based its decision on the Immigration Service report on female genital mutilation in Somalia (2016), according to which it is possible for girls not to be circumcised if the mother opposes it (p. 8). However, she also notes that the same report indicates that, if the mother is not strong enough to stand against the other women's will, then she may succumb to pressure or family members may perform the practice when the mother is not at home (p. 10). The author adds that, although female genital mutilation is prohibited by law in Somalia and in Puntland, the legislation is not enforced in practice. She adds that she herself was subjected to female genital mutilation at age 6 and that she has suffered oppression in Somalia due to her secret marriage and has not been able to seek protection from the authorities in the male-dominated society. Finally, she refers to the Office of the United Nations High Commissioner for Refugees (UNHCR) "Position on returns to southern and central Somalia" (June 2014), in which UNHCR urged States to refrain from forcibly returning any persons to southern and central Somalia (para. 20).

3.3 The author states that, under article 19 of the Convention, States parties are obliged to protect children against any harm or violence. In doing so, they must always take into consideration the best interests of the child.

3.4 The author claims that her daughter was discriminated against, in violation of article 2 of the Convention, because her case was only handled by the Refugee Appeals Board without any access to appeal. She claims that it was because her daughter was born in Denmark to a Somali mother; no other child born in Denmark would be subjected to a similar lack of fair trial guarantees.

3.5 The author notes that the Refugee Appeals Board did not make any reference to the Convention on the Rights of the Child in its decision.

State party's observations on admissibility and the merits

4.1 In its observations dated 16 August 2016, the State party informs the Committee that the Refugee Appeals Board decision of 2 February 2016 was replaced by a new Board decision on 14 March 2016, in which the Board specified that the author and her daughter were to be deported to Puntland — from where the author originated — and no other part of Somalia. However, the time limit for their deportation was suspended in the light of the Committee's request for interim measures (see para. 1.2 above).

4.2 The State party informs the Committee that, pursuant to article 53 (a) of the Danish Aliens Act, decisions of the Immigration Service are automatically appealed before the Refugee Appeals Board, unless the application was considered to be manifestly unfounded. The Refugee Appeals Board is an independent, quasi-judicial body that is considered as a court or tribunal within the meaning of article 46 of the European Council Directive

[6] The author does not specify what type of female genital mutilation her daughter would allegedly be submitted to.

[7] The author cites the decision of the Committee on the Elimination of Discrimination against Women concerning *M.N.N. v. Denmark* (CEDAW/C/55/D/33/2011).

2013/32/EU on common procedures for granting and withdrawing international protection. The Chair and Vice-Chair of the Board are required to be judges and other members must be attorneys and serve with the central administration of the Ministry of Foreign Affairs or the Ministry of Immigration, Integration and Housing. The members of the Board are appointed by the Executive Committee of the Board upon nomination by the Danish Court Administration (in the case of judges) or by the Danish Refugee Council, the Minister of Foreign Affairs and Minister of Immigration, Integration and Housing (in the case of other members). Members of the Board cannot seek instructions from the appointing or nominating authority or organization and they can only be suspended or dismissed by the Special Court of Indictment and Revision (like judges serving in Danish courts). Decisions by the Board are final, so there is no avenue for other judicial appeal.

4.3 The State party notes that, pursuant to section 7 (1) of the Danish Aliens Act, a residence permit will be issued to an alien upon application if they fall within the 1951 Convention relating to the Status of Refugees. Pursuant to section 7 (2) of the Aliens Act, a residence permit will also be issued to an alien if they risk being subjected to the death penalty or torture or ill-treatment in their country of origin. The Refugee Appeals Board considers that the conditions for the issuance of a residence permit under section 7 (2) of the Aliens Act to be met when there are specific and individual factors substantiating that the asylum seeker will be exposed to a real risk of the death penalty or torture if returned to his or her country of origin. The Aliens Act further requires that any refusal of an asylum request be accompanied by a decision on the existence of that risk. To ensure that the Board makes its decision in accordance with the State party's international obligations, the Board and the Immigration Service have jointly drafted a number of memorandums describing in detail the legal protection afforded to asylum seekers under international law, in particular the 1951 Convention relating to the Status of Refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

4.4 Proceedings before the Refugee Appeals Board include an oral hearing, in which the asylum seeker is allowed to make a statement and answer questions. Decisions by the Board are based on an individual and specific assessment of the relevant case. The asylum seeker's statements regarding the grounds for asylum are assessed in the light of all relevant evidence, including what is known about conditions in his or her country of origin. In that regard, the Board conducts a comprehensive collection of background material on the human rights situation in the country of origin, such as whether there is a consistent pattern of gross and systematic violations.[8] The Board ensures that all the facts of the case are raised and makes its decision on examination of the asylum seeker and witnesses and any other evidence provided to it. The State party notes that the asylum seeker must provide such information as is required for deciding whether he or she falls within section 7 of the Aliens Act. It is thus incumbent upon the asylum seeker to substantiate that the conditions for granting asylum are met. In cases where the asylum seeker's statements during the proceedings are characterized by inconsistencies or omissions, the Board will attempt to clarify the reasons. However, inconsistent statements about crucial elements of the grounds for granting asylum may weaken the asylum seeker's credibility. In such cases, the Board will take into account the asylum seeker's explanation for such inconsistencies and his or her particular situation, such as age, cultural background, literacy or condition as torture victim, among others.

4.5 The Refugee Appeals Board is responsible not only for examining information on the specific facts of a case but also for providing the necessary background information, including on the situation in the asylum seeker's country of origin or country of first asylum. For that purpose, the Board has a comprehensive collection of general background material

[8] The State party notes that background material is collected from various sources, including the UNHCR website, the European Country of Origin Information Network, the Danish Ministry of Foreign Affairs, the Country of Origin Information Division of the Danish Immigration Service, the Danish Refugee Council, Amnesty International, Human Rights Watch and other international human rights organizations.

on the situation in the countries from which Denmark receives asylum seekers, including Somalia.[9] This material is continuously updated.

4.6 The State party notes that the Committee has established in its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence that States parties have an obligation under article 19 of the Convention to prohibit, prevent and respond to all forms of physical violence against children (para. 11 (a)), including harmful practices such as female genital mutilation. Also, in joint general recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women/general comment No. 18 (2014) of the Committee on the Rights of the Child on harmful practices, the Committees provide for States parties to adopt legislative measures to effectively address and eliminate harmful practices. They should ensure that legislation and policies relating to immigration and asylum recognize that women risk being subjected to harmful practices or persecuted as a result of such practices as grounds for granting asylum. Consideration should also be given on a case-by-case basis to providing protection to a relative accompanying the girl or woman (para. 55 (m)). Furthermore, in line with the Committee's general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin, States parties shall not deport a child to a country where there are substantial grounds for believing that he or she would be subjected to a real risk of irreparable harm, such as those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. The assessment of such risk should be conducted in an age- and gender-sensitive manner. Therefore, the State party claims that the Convention would be deemed to be violated only if a child would be exposed to a real risk of irreparable harm if deported. That should be the guiding principle in cases concerning the expulsion of a girl when it has been submitted that she would be subjected to female genital mutilation upon return to a country.

4.7 The State party argues that the author has failed to establish a prima facie case as she has not sufficiently substantiated her claim that her daughter would be exposed to a real risk of irreparable harm if deported to Puntland, therefore, her claim should be declared inadmissible under article 7 (f) of the Optional Protocol.

4.8 The State party notes that the author has not provided any new and specific information about her situation that is different from that already provided to and assessed by the Refugee Appeals Board. The Board determines whether statements are coherent and consistent. In the present case, the author's general credibility was substantially weakened by the fact that her own grounds for asylum had been rejected by the Board on the basis that her account seemed to be fabricated for the occasion on essential points and her statements were incoherent.

4.9 In its decision of 2 February 2016, the Board found that the author had not rendered it probable that her daughter would be subjected to female genital mutilation if she is deported to Puntland. The Board emphasized the background information available on the general situation of female genital mutilation in that region, in particular the possibility for mothers to prevent their daughters from being subjected to female genital mutilation. Therefore, the Board concluded that the author's fear could not justify asylum under the Danish Aliens Act.

4.10 The State party notes that the decisive issue at stake is whether the author is willing and able to protect her daughter from being subjected to female genital mutilation by resisting any potential pressure from relatives or the local community in general. In that regard, the author alluded to her fear that her maternal aunt would mutilate her daughter. The State party argues that the author has not elaborated or specified her fear that her daughter would be subjected to female genital mutilation. It is clear from the author's statements that both she and her husband oppose female genital mutilation. The State party also notes that the author left Somalia in 2014, allegedly to avoid being forcefully married, and travelled to Ethiopia then Europe with the assistance of her spouse. She therefore appears to be an independent woman with considerable personal strength who — it is

[9] The background information consulted by the Refugee Appeals Board is available at www.fln.dk/da/baggrundsmateriale.

assumed — would be able to resist any social pressure and to protect her daughter from female genital mutilation.[10]

4.11 The State party notes that the author relied on reports referring to the situation in central and southern Somalia, according to which 90 to 99 per cent of the female population have been subjected to female genital mutilation. However, those reports are irrelevant to the present case. According to the country information guidance published by the United Kingdom Home Office in February 2015,[11] female genital mutilation is not as widely and consistently practiced in Puntland as in central and southern Somalia. Also, the practice is prohibited in Puntland. In the same guidance, it is stated that, according to the United Nations Children's Fund (UNICEF), incidents of female genital mutilation appeared to be declining in Somaliland and Puntland and that 75 per cent of girls aged 10 to 14 in those regions had not been subjected to female genital mutilation, whereas 98 per cent of those aged 15 and above had. Furthermore, according to the report of a fact-finding mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012, published by Lifos — the Swedish Migration Agency, a survey conducted in 2010 in Garowe and Boosaaso — where the author originates — showed a change in attitude towards female genital mutilation, which was reflected in a general decline from 85 per cent in 2004 to 72 per cent in 2010. In the same report, it was stated that incidents of grandmothers abducting their granddaughters to subject them to female genital mutilation had no longer been reported in Puntland; the practice was more widespread in rural areas, not in Boosaaso, which — with 700,000 inhabitants — is the largest city in the region.

4.12 Regarding the author's claim that the Board made no reference to the Convention, the State party notes that, because the Board did not expressly refer to the Convention, it does not mean that the Board failed to take the Convention into account. It states that the Board takes the Convention as well as other relevant international treaties into account as a crucial element in its examination of asylum applications involving children.

4.13 With regard to the general security situation in Somalia, the State party notes that the author has invoked the European Court of Human Rights case of *R.H. v. Sweden*[12] concerning the return of a woman to Mogadishu, not Puntland, which is therefore not applicable in the present case.

4.14 The State party also notes that, according to the jurisprudence of the Refugee Appeals Board, new grounds for asylum presented after the Immigration Service decision do not automatically result in the referral of a case to the Immigration Service for reconsideration at first instance. In most cases, a referral is not required as the Board can assess the new information on a fully informed basis at the Board hearing. A case would normally be referred back to the Immigration Service if new information has been provided on the asylum seeker's country of origin or in the event of changes to the legal basis that were deemed essential to the determination of the case. Also, Board hearings are attended by an Immigration Service representative. Therefore, the Immigration Service considers whether there are grounds for granting asylum before the Refugee Appeals Board reaches a decision on a case. Furthermore, no provision in the Convention affords the right of appeal in a case like the present one.

4.15 The State party submits that the author's daughter has not been subjected to discrimination of any kind owing to her or her parents' race, colour, sex, religion or other status that would justify a violation of article 2 of the Convention.

Author's comments on the State party's observations

5.1 In her comments dated 14 December 2016, the author alleges that the State party's argument of insufficient substantiation of the risk of irreparable harm is closely linked to

[10] In this respect, the author cites European Court of Human Rights, *Collins and Akaziebie v. Sweden* (application No. 23944/2005), decision of 8 March 2007.

[11] See United Kingdom Home Office, "Somalia: women fearing gender-based harm and violence", Country Information Guidance, February 2015.

[12] See European Court of Human Rights, *R.H. v. Sweden* (application No. 4601/2014), decision of 10 September 2015.

the merits. The author notes that she would be returned with her daughter to a country that has not ratified the Convention and where neither she nor her daughter would be afforded any protection, in violation of article 1 of the Convention, given that the author's daughter is a child.

5.2 The author claims that article 3 of the Convention imposes an obligation on State parties to act only in accordance with the best interests of the child. For example, if a mother states that she is taking her daughter to Somalia to perform female genital mutilation, the State party would have an obligation to take the child away from the mother in order to secure her best interests.

5.3 The author alleges that, even though female genital mutilation is prohibited in Somaliland and Puntland, the practice is still deeply embedded in society — although the incidence may be lower in Puntland than in Somaliland. The risk therefore exists. The issue at hand is whether the author would be able to obtain the required protection against this harmful practice if she and her daughter are deported. Since the laws in Puntland are not enforced, there is no or very little protection against female genital mutilation in practice. A single mother cannot protect her daughter 24 hours a day nor can she prevent this practice from being performed in her absence. The author notes that, in a decision of 27 March 2014, the Refugee Appeals Board granted asylum to a single mother from Somalia on the assumption that she would not be able to resist social pressure for the daughter to be subjected to female genital mutilation. Even though the author did not single out the grandmother or other relatives as possible perpetrators of female genital mutilation upon their return, pressure can also come from other members of the community members and Somali society at large. The author contends that the Refugee Appeals Board should have granted her protection on that basis. The State party's statement that the decisive issue is whether the author is willing and able to protect her daughter against female genital mutilation, and the conclusion that she appears to be an "independent woman with considerable personal strength" is an argument that was not raised during the Board hearing and the author was therefore unable to challenge it. The author adds that the UNICEF statistics cited by the State party (see para. 4.11) are based on a survey, therefore the figures are unreliable.

5.4 The author insists that the Refugee Appeals Board decision of February 2016 did not contain any reference to the Convention, which is in itself a violation. Also, the list of relevant international treaties on the Immigration Service website does not include the Convention.

5.5 In her view, the State party was obliged to take the best interests of the child into account when adopting its decision. She claims that the European Court of Human Rights considered that deporting single women to Somalia without a male network violated the European Convention on Human Rights because of the general security situation.

5.6 The author states that the Committee should not "allow" the State party to correct a decision of the Refugee Appeals Board, and that it should examine whether the February 2016 decision violated the Convention.

5.7 The author reiterates her claim regarding the lack of the possibility to appeal. She states that, even though the case was reopened by the Refugee Appeals Board, she was not invited to a new hearing, but rather received the new decision without being given the opportunity to challenge it.

Additional submissions from the parties

6. In its observations dated 2 March 2017, the State party notes that the author and her daughter failed to appear at the accommodation centre allocated to them, even though the Refugee Appeals Board had suspended the time limit for their departure until the Committee had reached a decision on the case. On 7 February 2017, the Board contacted the Immigration Service and the National Aliens Centre to inquire about the author and her daughter's whereabouts. Both agencies informed the Board that they did not know of the author and her daughter's whereabouts. The Police later stated that they were deemed to have left Denmark. On 10 February 2017, the Board contacted the author's counsel, who also stated that he did not know the author's whereabouts. The State party argues that, since

the Refugee Appeals Board considered that the author and her daughter had left Denmark, they were no longer under Danish jurisdiction and the daughter could not be considered a victim of any potential violation of the Convention. The State party considers the communication inadmissible under rule 13 (1) of the Committee's rules of procedure or, alternatively, the communication should be discontinued under rule 26 of those rules.[13]

7. On 10 April 2017, the author's counsel notes that the State party is unable to establish that the author and her daughter are no longer in Denmark. The fact that they are no longer at the asylum centre is not sufficient reason to automatically conclude that they have left Denmark. Furthermore, even if they are no longer in Denmark, this would not be sufficient to preclude jurisdiction.[14]

8. On 18 May 2017, the State party insists that the author and her daughter had a right to remain in Denmark for the duration of the proceedings before the Committee. Also, under section 42 (a) (1) of the Danish Aliens Act, an alien staying in Denmark and who lodges an application for residence will have the costs of his or her maintenance and any necessary health-care services covered by the Immigration Service. The Immigration Service decides on the accommodation and may order that the alien stay at a specific accommodation centre. However, the author and her daughter left their accommodation and have not applied for private accommodation. The Refugee Appeals Board contacts the police when asylum seekers who have been recorded in the immigration registry go missing for over 14 days. If the police are unaware of the location of those asylum seekers, the Refugee Appeals Board closes their case. In the light of this, the State party argues that it has accepted as a fact that the author and her daughter have left Denmark voluntarily.

9. On 7 November 2017, the State party reiterates its request for consideration of the communication to be discontinued as well as its previous arguments as to the inadmissibility of the communication. With regard to the author's argument regarding the non-ratification of the Convention by Puntland, the State party notes that Puntland has not been recognized as an independent State by the international community and therefore remains a region of Somalia, which has ratified the Convention. In any case, the relevant issue is not the ratification of, but the compliance with the Convention. The State party insists that a case is only be remitted to the Immigration Service if new essential information is provided, which was not the case here, and, in any event, the Convention does not afford the right to appeal in cases like the present one. Finally, the State party notes that the author has invoked other Refugee Appeals Board cases for which asylum had been granted, but she did not show the similarities of those cases — which did not involve deportations to Puntland — with hers. The State party notes that the ability of a mother to resist social pressure can only be determined on the basis of a very specific assessment of the personal circumstances of the individual case.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of its rules of procedure, whether or not the claim is admissible under the Optional Protocol.

10.2 The Committee notes the author's statement that decisions by the Danish Refugee Appeals Board are not subject to appeal and therefore all domestic remedies have been exhausted. This has not been challenged by the State party. Therefore, the Committee considers that there is no obstacle to the admissibility of the communication under article 7 (e) of the Optional Protocol.

[13] The State party cites the decisions of the Human Rights Committee to discontinue the consideration of *M.R.R. v. Denmark* (CCPR/C/118/D/2440/2014) and *B.V.A. v. Denmark* (CCPR/C/118/D/2468/2014), which were based on the fact that the respective authors' whereabouts had become unknown.

[14] In this regard, the author notes that both the Human Rights Committee and the Committee against Torture have adopted decisions finding cases admissible or finding violations of the respective treaties, when the authors had already been returned to their country of origin.

10.3 The Committee takes note of the author's claim based on article 2 of the Convention that her daughter was discriminated against because, as a result of having been born in Denmark to a Somali mother, her claim was only considered by the Refugee Appeals Board without any possibility to appeal. The Committee observes, however, that the author makes this claim in a very general manner, without showing the existence of a link between her daughter's or her own origin and the alleged absence of appeal proceedings against the decisions of the Danish Refugee Appeals Board. Therefore, the Committee declares this claim manifestly ill-founded and inadmissible under article 7 (f) of the Optional Protocol.

10.4 The Committee takes note of the State party's argument that the author has not sufficiently substantiated her claim that her daughter would be at risk of being subjected to female genital mutilation if deported to Puntland. However, the Committee considers that, in the light of the author's allegations regarding the circumstances under which she would be returned, the author's claims based on articles 3 and 19 of the Convention have been sufficiently substantiated for purposes of admissibility.

10.5 The Committee takes note of the State party's argument that the author and her daughter are deemed to have left the territory of the State party and, consequently, they are no longer under its jurisdiction. The Committee notes, however, that the author and her daughter's departure from Denmark is merely speculative as it has not been confirmed. Also, the deportation order issued against them remains in effect, which means that the author and her daughter would still face deportation should they be located. The Committee therefore considers that it is not precluded from examining the present communication on the basis of rule 13 (1) of its rules of procedure.

10.6 The Committee therefore declares the author's claims concerning the obligation of the State party to: (a) act in the best interests of the child (article 3 of the Convention); and (b) take measures to protect the child from all forms of physical or mental violence, injury or abuse admissible.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

11.2 The Committee takes note of the author's allegations that her daughter's deportation to Puntland would expose her to the risk of being subjected to female genital mutilation, and that the State party failed to take the best interests of the child into account when deciding on the author's asylum application, in violation of articles 3 and 19 of the Convention.

11.3 In that respect, the Committee recalls its general comment No. 6, in which it states that States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention; and that such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age- and gender-sensitive manner.[15] In that sense, the Committee advises that, "when assessing refugee claims ..., States shall take into account the development of, and formative relationship between, international human rights and refugee law, including positions developed by UNHCR in exercising its supervisory functions under the 1951 Refugee Convention. In particular, the refugee definition in that Convention must be interpreted in an age- and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital

[15] See the Committee's general comment No. 6, para. 27, and the Committee on the Elimination of Discrimination against Women general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, para. 25.

mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures."[16]

11.4 In the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child, the Committees noted that female genital mutilation may have various immediate and/or long-term health consequences.[17] They recommended that the legislation and policies relating to immigration and asylum should recognize the risk of being subjected to harmful practices or being persecuted as a result of such practices as a ground for granting asylum and that consideration should also be given to providing protection to a relative who may be accompanying the girl or woman.[18]

11.5 The Committee takes note of the author's allegations that she would be unable to protect her daughter from being subjected to female genital mutilation in a country where 98 per cent of women have been subjected to that practice and where she would not be afforded any protection by national/local authorities. Although prohibited by law throughout Somalia, the practice of female genital mutilation is still prevalent as the legislation is not enforced. Also, the author herself was subjected to female genital mutilation at age 6; suffered oppression as a result of her secret marriage; and was unable to seek protection from the national authorities in the male-dominated society. The Committee takes note of the State party's observation that, according to several reports, a mother can protect her daughter from being subjected to female genital mutilation in Puntland if she is able to resist family or community pressure; that the author failed to explain the specific risk that her daughter would run; that, by leaving Somalia and travelling to Europe, the author showed that she was an independent woman with considerable personal strength who, it must be assumed, would be able to resist social pressures and protect her daughter from being subjected to female genital mutilation; and that the author's general credibility was undermined by the fact that she was not deemed credible regarding her own grounds for asylum. Finally, the Committee notes the State party's claim that incidents of female genital mutilation have declined in Somaliland and Puntland,[19] and that 75 per cent of girls aged between 10 and 14 have not been subjected to the practice, according to 2013 data.[20]

11.6 The Committee notes that, although the prevalence of female genital mutilation appears to have declined in Puntland, according to reports submitted by the parties,[21] as a result of, inter alia, the 2014 law banning female genital mutilation in the region, the 2013 fatwa against all forms of female genital mutilation and the 2014 policy against female genital mutilation,[22] the practice is still deeply engrained in Somali society.

11.7 The Committee also notes that, in its decision of 2 February 2017, the Refugee Appeals Board examined the author's allegations concerning her own grounds for asylum and found them non-credible. In that same decision, the Board dedicated one paragraph to addressing the author's allegations regarding the alleged risk that her daughter would be subjected to female genital mutilation if deported to Puntland and dismissed those allegations, stating that the Board "attache[d] decisive importance to the background information available, including in particular the information that, in Puntland, Somalia, it

[16] See the Committee's general comment No. 6, para. 74.

[17] See the joint general recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women/general comment No. 18 (2014) of the Committee on the Rights of the Child on harmful practices, para. 19.

[18] Ibid., para. 55.

[19] See Lifos — Swedish Migration Agency, "Report of fact-finding mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012".

[20] See UK Home Office, "Somalia: women fearing gender-based harm and violence".

[21] See in particular, Lifos — Swedish Migration Agency, "Report of fact-finding mission in June 2012", and UK Home Office, "Somalia: women fearing gender-based harm and violence", both of which situate the general prevalence rate of female genital mutilation in Puntland at around 70 per cent.

[22] See Somalia, Ministry of Women's Development and Family Affairs, Female genital mutilation/cutting policy of November 2014 (supported by UNICEF Somalia).

is possible for mothers to prevent their daughters from being subjected to female genital mutilation against the will of the mothers". The background information relied upon was the Immigration Service report on female genital mutilation in central and southern Somalia (2015), not in the Puntland region. The Board also ordered the author and her daughter's deportation to Somalia, and it was only in its later decision of 14 March 2017 that it corrected the destination and stated that they should be returned to Puntland, without any further reasoning.

11.8 The Committee recalls that the best interests of the child should be a primary consideration in decisions concerning the deportation of a child and that such decisions should ensure — within a procedure with proper safeguards — that the child will be safe and provided with proper care and enjoyment of rights.[21] In the present case, the Committee notes the arguments and information submitted to it, including the assessment of the mother's assumed ability to resist social pressure based on her past experience in Puntland and on reports about the specific situation of female genital mutilation in Puntland. However, the Committee observes that:

(a) The Refugee Appeals Board's assessment was limited to general reference to a report on central and southern Somalia, without assessing the specific and personal context in which the author and her daughter would be deported and without taking the best interests of the child into account, in particular in the light of the persistently high prevalence of female genital mutilation in Puntland and the fact that the author would be returning as a single mother without a male supporting network;

(b) The State party has argued that the author, by leaving Somalia, appears to be an independent woman with considerable personal strength who would be able to resist any social pressure and thus protect her daughter from being subjected to female genital mutilation. However, the Committee notes that the author's departure could also be interpreted as an inability to resist pressure. In any event, the Committee considers that the rights of the child under article 19 of the Convention cannot be made dependent on the mother's ability to resist family and social pressures and that State parties should take measures to protect children from all forms of physical or mental violence, injury or abuse in all circumstances, even where the parent or guardian is unable to resist social pressure;

(c) The evaluation of the risk that a child may be subjected to an irreversible harmful practice such as female genital mutilation in the country to which he or she is being deported should be carried out following the principle of precaution and, where reasonable doubts exist that the receiving State cannot protect the child against such practices, State parties should refrain from deporting the child.

11.9 The Committee therefore concludes that the State party failed to consider the best interests of the child when assessing the alleged risk of the author's daughter being subjected to female genital mutilation if deported to Puntland and to take proper safeguards to ensure the child's well-being upon return, in violation of articles 3 and 19 of the Convention.

11.10 The Committee, acting under article 10 (5) of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, is of the view that the facts before it disclose a violation of articles 3 and 19 of the Convention.

12. The State party is under an obligation to refrain from deporting the author and her daughter to Puntland. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

13. The Committee recalls that, by becoming a party to the Optional Protocol to the Convention on a communications procedure, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Convention or its two substantive Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.

[21] See joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child, paras. 29 and 33.

14. Pursuant to article 11 of the Optional Protocol on a communications procedure, the Committee wishes to receive from the State party within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. Finally, the State party is requested to publish the present Views and to have them widely disseminated in the official language of the State party.